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designated by the Administrator, permit the officer or employee at reasonable times to have access to and copy such records. The manufacturer shall comply in all respects with the requirements of subpart I of this part.

(2) For purposes of enforcement of this part, an officer or employee duly designated by the Administrator, upon presenting appropriate credentials, is authorized:

(i) To enter, at reasonable times, any establishment of the manufacturer, or of any person whom the manufacturer engaged to perform any activity required under paragraph (a)(1) of this section, for the purposes of inspecting or observing any activity conducted pursuant to paragraph (a)(1) of this section; and

(ii) To inspect records, files, papers, processes, controls, and facilities used in performing an activity required by paragraph (a)(1) of this section, by the manufacturer or by a person whom the manufacturer engaged to perform the activity.

(b) *Exemption provision.* The Administrator may exempt a new nonroad engine from § 90.1003 upon such terms and conditions as the Administrator may find necessary for the purpose of export, research, investigations, studies, demonstrations, or training, or for reasons of national security.

(c) *Importation provision.* (1) A new nonroad engine or vehicle offered for importation or imported by a person in violation of § 90.1003 is to be refused admission into the United States, but the Secretary of the Treasury and the Administrator may, by joint regulation, provide for deferring a final determination as to admission and authorizing the delivery of such a nonroad engine offered for import to the owner or consignee thereof upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that the nonroad engine will be brought into conformity with the standards, requirements, and limitations applicable to it under this part.

(2) If a nonroad engine is finally refused admission under this paragraph, the Secretary of the Treasury shall cause disposition thereof in accordance with the customs laws unless it is ex-

ported, under regulations prescribed by the Secretary, within 90 days of the date of notice of the refusal or additional time as may be permitted pursuant to the regulations.

(3) Disposition in accordance with the customs laws may not be made in such manner as may result, directly or indirectly, in the sale, to the ultimate purchaser, of a new nonroad engine that fails to comply with applicable standards of the Administrator under this part.

(d) *Export provision.* A new nonroad engine intended solely for export, and so labeled or tagged on the outside of the container and on the engine itself, shall be subject to the provisions of § 90.1003, except that if the country that is to receive the engine has emission standards that differ from the standards prescribed under subpart B of this part, then the engine must comply with the standards of the country that is to receive the engine.

§ 90.1005 Injunction proceedings for prohibited acts.

(a) The district courts of the United States have jurisdiction to restrain violations of § 90.1003.

(b) Actions to restrain such violations must be brought by and in the name of the United States. In an action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

§ 90.1006 Penalties.

(a) *Violations.* A violation of the requirements of this subpart is a violation of the applicable provisions of the Act and is subject to the penalty provisions thereunder.

(1) A person who violates § 90.1003(a)(1), (a)(4), or (a)(5), or a manufacturer or dealer who violates § 90.1003(a)(3)(i), is subject to a civil penalty of not more than \$25,000 for each violation.

(2) A person other than a manufacturer or dealer who violates § 90.1003(a)(3)(i) or any person who violates § 90.1003(a)(3)(ii) is subject to a civil penalty of not more than \$2,500 for each violation.

(3) A violation with respect to § 90.1003(a)(1), (a)(3)(i), (a)(4), or (a)(5)

constitutes a separate offense with respect to each nonroad engine.

(4) A violation with respect to § 90.1003(a)(3)(ii) constitutes a separate offense with respect to each part or component. Each day of a violation with respect to § 90.1003(a)(6) constitutes a separate offense.

(5) A person who violates § 90.1003(a)(2) or (a)(6) is subject to a civil penalty of not more than \$25,000 per day of violation.

(b) *Civil actions.* The Administrator may commence a civil action to assess and recover any civil penalty under paragraph (a) of this section.

(1) An action under this paragraph may be brought in the district court of the United States for the district in which the violation is alleged to have occurred, the defendant resides, or the Administrator's principal place of business is located, and in which the court has jurisdiction to assess a civil penalty.

(2) In determining the amount of a civil penalty to be assessed under this paragraph, the court is to take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with Title II of the Act, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.

(3) In any such action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

(c) *Administrative assessment of certain penalties.* (1) *Administrative penalty authority.* In lieu of commencing a civil action under paragraph (b) of this section, the Administrator shall assess any civil penalty prescribed in paragraph (a) of this section, except that the maximum amount of penalty sought against each violator in a penalty assessment proceeding can not exceed \$200,000, unless the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment. Any such determination by the Administrator and the Attorney General is

not subject to judicial review. Assessment of a civil penalty is made by an order made on the record after opportunity for a hearing held in accordance with the procedures found at part 22 of this chapter. The Administrator may compromise, or remit, with or without conditions, any administrative penalty which may be imposed under this section.

(2) *Determining amount.* In determining the amount of any civil penalty assessed under this subsection, the Administrator is to take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with Title II of the Act, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.

(3) *Effect of administrator's action.* (i) Action by the Administrator under this paragraph does not affect or limit the Administrator's authority to enforce any provisions of this part; except that any violation with respect to which the Administrator has commenced and is diligently prosecuting an action under this part, or for which the Administrator has issued a final order not subject to further judicial review and for which the violator has paid a penalty assessment under this part may not be the subject of a civil penalty action under paragraph (b) of this section.

(ii) No action by the Administrator under this part affects a person's obligation to comply with a section of this part.

(4) *Finality of order.* An order issued under this part becomes final 30 days after its issuance unless a petition for judicial review is filed under paragraph (c)(5) of this section.

(5) *Judicial review.* (i) A person against whom a civil penalty is assessed in accordance with this part may seek review of the assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, in which such person resides, or where the person's principal place of business is located, within the 30-day period beginning on the date a

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civil penalty order is issued. The person must simultaneously send a copy of the filing by certified mail to the Administrator and the Attorney General.

(ii) The Administrator must file in the court within 30 days a certified copy, or certified index, as appropriate, of the record on which the order was issued. The court is not to set aside or remand any order issued in accordance with the requirements of this paragraph unless substantial evidence does not exist in the record, taken as a whole, to support the finding of a violation or unless the Administrator's assessment of the penalty constitutes an abuse of discretion, and the court is not to impose additional civil penalties unless the Administrator's assessment of the penalty constitutes an abuse of discretion. In any proceedings, the United States may seek to recover civil penalties assessed under this section.

(6) *Collection.* (i) If any person fails to pay an assessment of a civil penalty imposed by the Administrator as provided in this part after the order making the assessment has become final or after a court in an action brought under paragraph (c)(5) of this section has entered a final judgment in favor of the Administrator, the Administrator is to request that the Attorney General bring a civil action in an appropriate district court to recover the amount assessed (plus interest at rates established pursuant to section 6621(a)(2) of the Internal Revenue Code of 1986 from the date of the final order or the date of final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of the penalty are not subject to review.

(ii) A person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in paragraph (c)(6)(i) of this section is required to pay, in addition to that amount and interest, the United States' enforcement expenses, including attorney's fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty is an amount equal to 10 percent of the aggregate amount of that person's penalties and nonpayment penalties which are un-

paid as of the beginning of such quarter.

Subpart L—Emission Warranty and Maintenance Instructions

§ 90.1101 Applicability.

The requirements of subpart L are applicable to all nonroad engines and vehicles subject to the provisions of subpart A of part 90.

§ 90.1102 Definitions.

The definitions of subpart A of this part apply to this subpart.

§ 90.1103 Emission warranty, warranty period.

(a) Warranties imposed by this subpart shall be for the first two years of engine use from the date of sale to the ultimate purchaser. Manufacturers of handheld engines subject to Phase 2 standards may apply to the Administrator for approval for a warranty period of less than two years for handheld engines that are subject to severe service in seasonal equipment and are likely to run their full useful life hours in less than two years. Such an application must be made prior to certification. Alternatively, manufacturers of handheld engines subject to Phase 2 standards may apply to the Administrator for approval for a warranty period equal to the useful life of the engine or two years, whichever is less, if the equipment in which the engine is placed is equipped with a meter for measuring hours of use. Such an application must be made prior to certification.

(b) The manufacturer of each new nonroad engine must warrant to the ultimate purchaser and each subsequent purchaser that the engine is designed, built and equipped so as to conform at the time of sale with applicable regulations under section 213 of the Act, and the engine is free from defects in materials and workmanship which cause such engine to fail to conform with applicable regulations for its warranty period.

(c) In the case of a nonroad engine part, the manufacturer or rebuilder of the part may certify according to § 85.2112 of this chapter that use of the part will not result in a failure of the